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(iii) *Reasonable basis.* (A) You have a reasonable basis to believe that mortgage information is lawfully made available to the general public if you have determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(B) You have a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if you have located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

(s)(1) *You* means a financial institution or other person for which the Bureau has rulemaking authority under section 504(a)(1)(A) of the GLB Act (15 U.S.C. 6804(a)(1)(A)).

(2) *You* does not include:

(i) A financial institution that is a person described in section 1029(a) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5519(a));

(ii) A financial institution or other person subject to the jurisdiction on the Commodity Futures Trading Commission under 7 U.S.C. 7b-2;

(iii) A broker or dealer that is registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*);

(iv) A registered investment adviser, properly registered by or on behalf of either the Securities Exchange Commission or any State, with respect to its investment advisory activities and its activities incidental to those investment advisory activities;

(v) An investment company that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*); or

(vi) An insurance company, with respect to its insurance activities and its activities incidental to those insurance activities, that is subject to supervision by a State insurance regulator.

Subpart A—Privacy and Opt Out Notices

§ 1016.4 Initial privacy notice to consumers required.

(a) *Initial notice requirement.* You must provide a clear and conspicuous notice that accurately reflects your privacy policies and practices to:

(1) *Customer.* An individual who becomes your customer, not later than when you establish a customer relationship, except as provided in paragraph (e) of this section; and

(2) *Consumer.* A consumer, before you disclose any nonpublic personal information about the consumer to any nonaffiliated third party, if you make such a disclosure other than as authorized by §§ 1016.14 and 1016.15 of this part.

(b) *When initial notice to a consumer is not required.* You are not required to provide an initial notice to a consumer under paragraph (a) of this section if:

(1) You do not disclose any nonpublic personal information about the consumer to any nonaffiliated third party, other than as authorized by §§ 1016.14 and 1016.15; and

(2) You do not have a customer relationship with the consumer.

(c) *When you establish a customer relationship—(1) General rule.* You establish a customer relationship when you and the consumer enter into a continuing relationship.

(2) *Special rule for loans.* You establish a customer relationship with a consumer when you originate or acquire the servicing rights to a loan to the consumer for personal, family, or household purposes. If you subsequently transfer the servicing rights to that loan to another financial institution, the customer relationship transfers with the servicing rights.

(3) *Examples.* (i) *Examples of establishing customer relationship by financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (c)(3)(i), “you” is limited to financial institutions other than credit unions and financial institutions described in § 1016.3(1)(3). You establish a customer relationship when the consumer:

(A) Opens a credit card account with you;

(B) Executes the contract to open a deposit account with you, obtains credit from you, or purchases insurance from you;

(C) Agrees to obtain financial, economic, or investment advisory services from you for a fee; or

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(D) Becomes your client for the purpose of your providing credit counseling or tax preparation services.

(ii) *Examples of establishing customer relationship by covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (c)(3)(ii), “you” is limited to financial institutions described in §1016.3(1)(3) of this part. You establish a customer relationship when the consumer:

(A) Opens a credit card account with you;

(B) Executes the contract to obtain credit from you or purchases insurance from you;

(C) Agrees to obtain financial, economic, or investment advisory services from you for a fee;

(D) Becomes your client for the purpose of your providing credit counseling or tax preparation services or to obtain career counseling while seeking employment with a financial institution or the finance, accounting, or audit department of any company (or while employed by such a company or financial institution);

(E) Provides any personally identifiable financial information to you in an effort to obtain a mortgage loan through you;

(F) Executes the lease for personal property with you;

(G) Is an obligor on an account that you purchased from another financial institution and whom you have located and begun attempting to collect amounts owed on the account; or

(H) Provides you with the information necessary for you to compile and provide access to all of the consumer’s online financial accounts at your Web site.

(iii) *Examples of establishing customer relationship by credit unions.* For purposes of this paragraph (c)(3)(iii), “you” is limited to a credit union. You establish a customer relationship when the consumer:

(A) Becomes your member under your bylaws;

(B) Is a nonmember and opens a credit card account with you jointly with a member under your procedures;

(C) Is a nonmember and executes the contract to open a share or share draft account with you or obtains credit from you jointly with a member, in-

cluding an individual acting as a guarantor;

(D) Is a nonmember and opens an account with you and you are a credit union designated as a low-income credit union;

(E) Is a nonmember and opens an account with you pursuant to State law and you are a State-chartered credit union.

(iv) *Examples of loan rule.* You establish a customer relationship with a consumer who obtains a loan for personal, family, or household purposes when you:

(A) Originate the loan to the consumer; or

(B) Purchase the servicing rights to the consumer’s loan.

(d) *Existing customers.* When an existing customer obtains a new financial product or service from you that is to be used primarily for personal, family, or household purposes, you satisfy the initial notice requirements of paragraph (a) of this section as follows:

(1) You may provide a revised privacy notice, under §1016.8 of this part, that covers the customer’s new financial product or service; or

(2) If the initial, revised, or annual notice that you most recently provided to that customer was accurate with respect to the new financial product or service, you do not need to provide a new privacy notice under paragraph (a) of this section.

(e) *Exceptions to allow subsequent delivery of notice.* (1) You may provide the initial notice required by paragraph (a)(1) of this section within a reasonable time after you establish a customer relationship if:

(i) Establishing the customer relationship is not at the customer’s election; or

(ii) Providing notice not later than when you establish a customer relationship would substantially delay the customer’s transaction and the customer agrees to receive the notice at a later time.

(2) *Examples of exceptions.* (i) *Not at customer’s election.* (A) In the case of financial institutions other than credit unions and financial institutions described in §1016.3(1)(3), establishing a

customer relationship is not at the customer's election if you acquire a customer's deposit liability or the servicing rights to a customer's loan from another financial institution and the customer does not have a choice about your acquisition.

(B) In the case of financial institutions described in §1016.3(1)(3), establishing a customer relationship is not at the customer's election if you acquire a customer's loan or the servicing rights from another financial institution and the customer does not have a choice about your acquisition.

(C) In the case of credit unions, establishing a customer relationship is not at the customer's election if you acquire a customer's deposit liability from another financial institution and the customer does not have a choice about your acquisition.

(ii) *Substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction when:

(A) You and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service; or

(B) You establish a customer relationship with an individual under a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) or similar student loan programs where loan proceeds are disbursed promptly without prior communication between you and the customer.

(iii) *No substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at your office or through other means by which the customer may view the notice, such as on a Web site.

(f) *Delivery.* When you are required to deliver an initial privacy notice by this section, you must deliver it according to §1016.9 of this part. If you use a short-form initial notice for non-customers according to §1016.6(d) of this part, you may deliver your privacy notice according to §1016.6(d)(3).

§ 1016.5 Annual privacy notice to customers required.

(a)(1) *General rule.* You must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices not less than annually during the continuation of the customer relationship. *Annually* means at least once in any period of 12 consecutive months during which that relationship exists. You may define the 12-consecutive-month period, but you must apply it to the customer on a consistent basis.

(2) *Example.* You provide a notice annually if you define the 12-consecutive-month period as a calendar year and provide the annual notice to the customer once in each calendar year following the calendar year in which you provided the initial notice. For example, if a customer opens an account on any day of year 1, you must provide an annual notice to that customer by December 31 of year 2.

(b)(1) *Termination of customer relationship.* You are not required to provide an annual notice to a former customer.

(2) *Examples in the case of financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (b)(2), "you" is limited to financial institutions other than credit unions and financial institutions described in §1016.3(1)(3). Your customer becomes a former customer when:

(i) In the case of a deposit account, the account is inactive under your policies;

(ii) In the case of a closed-end loan, the customer pays the loan in full, you charge off the loan, or you sell the loan without retaining servicing rights;

(iii) In the case of a credit card relationship or other open-end credit relationship, you no longer provide any statements or notices to the customer concerning that relationship or you sell the credit card receivables without retaining servicing rights; or

(iv) You have not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

(3) *Examples in the case of covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph

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(b)(3), “you” is limited to financial institutions described in §1016.3(1)(3) of this part. Your customer becomes a former customer when:

(i) In the case of a closed-end loan, the customer pays the loan in full, you charge off the loan, or you sell the loan without retaining servicing rights;

(ii) In the case of a credit card relationship or other open-end credit relationship, you sell the receivables without retaining servicing rights;

(iii) In the case of credit counseling services, the customer has failed to make required payments under a debt management plan, has been notified that the plan is terminated, and you no longer provide any statements or notices to the customer concerning that relationship;

(iv) In the case of mortgage or vehicle loan brokering services, your customer has obtained a loan through you (and you no longer provide any statements or notices to the customer concerning that relationship), or has ceased using your services for such purposes;

(v) In the case of tax preparation services, you have provided and received payment for the service and no longer provide any statements or notices to the customer concerning that relationship;

(vi) In the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, you have received payment, or you have completed all of your responsibilities with respect to the settlement, including filing documents on the public record, whichever is later; or

(vii) In cases where there is no definitive time at which the customer relationship has terminated, you have not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

(4) *Examples in the case of a credit union.* An individual becomes a former customer of a credit union when:

(i) The individual is no longer the credit union’s member as defined in the credit union’s bylaws;

(ii) In the case of a nonmember’s share or share draft account, the ac-

count is inactive under the credit union’s policies;

(iii) In the case of a nonmember’s closed-end loan, the loan is paid in full, the credit union charges off the loan, or the credit union sells the loan without retaining servicing rights;

(iii) In the case of a credit card relationship or other open-end credit relationship with a nonmember, the credit union no longer provides any statements or notices to the nonmember concerning that relationship, or the credit union sells the credit card receivables without retaining servicing rights; or

(v) The credit union has not communicated with the nonmember about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

(c) *Special rule for loans in the case of a financial institution other than a credit union.* If a financial institution other than a credit union does not have a customer relationship with a consumer under the special rule for loans in §1016.4(c)(2) of this part, then it need not provide an annual notice to that consumer under this section.

(d) *Delivery.* When you are required to deliver an annual privacy notice by this section, you must deliver it according to §1016.9 of this part.

§ 1016.6 Information to be included in privacy notices.

(a) *General rule.* The initial, annual, and revised privacy notices that you provide under §§1016.4, 1016.5, and 1016.8 of this part must include each of the following items of information, in addition to any other information you wish to provide, that applies to you and to the consumers to whom you send your privacy notice:

(1) The categories of nonpublic personal information that you collect;

(2) The categories of nonpublic personal information that you disclose;

(3) The categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information, other than those parties to whom you disclose information under §§1016.14 and 1016.15 of this part;

(4) The categories of nonpublic personal information about your former

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customers that you disclose and the categories of affiliates and non-affiliated third parties to whom you disclose nonpublic personal information about your former customers, other than those parties to whom you disclose information under §§1016.14 and 1016.15;

(5) If you disclose nonpublic personal information to a nonaffiliated third party under §1016.13 (and no other exception in §1016.14 or §1016.15 applies to that disclosure), a separate statement of the categories of information you disclose and the categories of third parties with whom you have contracted;

(6) An explanation of the consumer's right under §1016.10(a) of this part to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right at that time;

(7) Any disclosures that you make under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(8) Your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(9) Any disclosure that you make under paragraph (b) of this section.

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information to third parties as authorized under §§1016.14 and 1016.15, you are not required to list those exceptions in the initial or annual privacy notices required by §§1016.4 and 1016.5. When describing the categories with respect to those parties, it is sufficient to state that you make disclosures to other nonaffiliated companies:

(1) For your everyday business purposes, such as [include all that apply] to process transactions, maintain account(s), respond to court orders and legal investigations, or report to credit bureaus; or

(2) As permitted by law.

(c) *Examples—(1) Categories of nonpublic personal information that you collect.* You satisfy the requirement to categorize the nonpublic personal in-

formation that you collect if you list the following categories, as applicable:

(i) Information from the consumer;

(ii) Information about the consumer's transactions with you or your affiliates;

(iii) Information about the consumer's transactions with nonaffiliated third parties; and

(iv) Information from a consumer reporting agency.

(2) *Categories of nonpublic personal information you disclose.* (i) You satisfy the requirement to categorize the nonpublic personal information that you disclose if you list the categories described in paragraph (c)(1) of this section, as applicable, and a few examples to illustrate the types of information in each category.

(ii) If you reserve the right to disclose all of the nonpublic personal information about consumers that you collect, you may simply state that fact without describing the categories or examples of the nonpublic personal information you disclose.

(3) *Categories of affiliates and non-affiliated third parties to whom you disclose.* You satisfy the requirement to categorize the affiliates and non-affiliated third parties to whom you disclose nonpublic personal information if you list the following categories, as applicable, and a few examples to illustrate the types of third parties in each category.

(i) Financial service providers, followed by illustrative examples such as mortgage bankers, securities broker-dealers, and insurance agents;

(ii) Non-financial companies, followed by illustrative examples such as retailers, magazine publishers, airlines, and direct marketers; and

(iii) Others, followed by examples such as nonprofit organizations.

(4) *Disclosures under exception for service providers and joint marketers.* If you disclose nonpublic personal information under the exception in §1016.13 of this part to a nonaffiliated third party to market products or services that you offer alone or jointly with another financial institution, you satisfy the disclosure requirement of paragraph (a)(5) of this section if you:

(i) List the categories of nonpublic personal information you disclose,

using the same categories and examples you used to meet the requirements of paragraph (a)(2) of this section, as applicable; and

(ii) State whether the third party is:

(A) A service provider that performs marketing services on your behalf or on behalf of you and another financial institution; or

(B) A financial institution with whom you have a joint marketing agreement.

(5) *Simplified notices.* If you do not disclose, and do not wish to reserve the right to disclose, nonpublic personal information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under §§1016.14 and 1016.15, you may simply state that fact, in addition to the information you must provide under paragraphs (a)(1), (a)(8), (a)(9), and (b) of this section.

(6) *Confidentiality and security.* You describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information if you do both of the following:

(i) Describe in general terms who is authorized to have access to the information; and

(ii) State whether you have security practices and procedures in place to ensure the confidentiality of the information in accordance with your policy. You are not required to describe technical information about the safeguards you use.

(d) *Short-form initial notice with opt out notice for non-customers.* (1) You may satisfy the initial notice requirements in §§1016.4(a)(2), 1016.7(b), and 1016.7(c) of this part for a consumer who is not a customer by providing a short-form initial notice at the same time as you deliver an opt out notice as required in §1016.7.

(2) A short-form initial notice must:

(i) Be clear and conspicuous;

(ii) State that your privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain that notice.

(3) You must deliver your short-form initial notice according to §1016.9. You are not required to deliver your privacy notice with your short-form ini-

tial notice. You instead may simply provide the consumer a reasonable means to obtain your privacy notice. If a consumer who receives your short-form notice requests your privacy notice, you must deliver your privacy notice according to §1016.9.

(4) *Examples of obtaining privacy notice.* You provide a reasonable means by which a consumer may obtain a copy of your privacy notice if you:

(i) Provide a toll-free telephone number that the consumer may call to request the notice; or

(ii) For a consumer who conducts business in person at your office, maintain copies of the notice on hand that you provide to the consumer immediately upon request.

(e) *Future disclosures.* Your notice may include:

(1) Categories of nonpublic personal information that you reserve the right to disclose in the future, but do not currently disclose; and

(2) Categories of affiliates or nonaffiliated third parties to whom you reserve the right in the future to disclose, but to whom you do not currently disclose, nonpublic personal information.

(f) *Model privacy form.* Pursuant to §1016.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in the appendix to this part.

§ 1016.7 Form of opt out notice to consumers; opt out methods.

(a)(1) *Form of opt out notice.* If you are required to provide an opt out notice under §1016.10(a), you must provide a clear and conspicuous notice to each of your consumers that accurately explains the right to opt out under that section. The notice must state:

(i) That you disclose or reserve the right to disclose nonpublic personal information about your consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(2) *Examples.* (i) *Adequate opt out notice.* You provide adequate notice that

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the consumer can opt out of the disclosure of nonpublic personal information to a nonaffiliated third party if you:

(A) Identify all of the categories of nonpublic personal information that you disclose or reserve the right to disclose, and all of the categories of nonaffiliated third parties to which you disclose the information, as described in § 1016.6(a)(2) and (3) of this part, and state that the consumer can opt out of the disclosure of that information; and

(B) Identify the financial products or services that the consumer obtains from you, either singly or jointly, to which the opt out direction would apply.

(ii) *Reasonable opt out means.* You provide a reasonable means to exercise an opt out right if you:

(A) Designate check-off boxes in a prominent position on the relevant forms with the opt out notice;

(B) Include a reply form together with the opt out notice that, in the case of financial institutions described in § 1016.3(1)(3) of this part, includes the address to which the form should be mailed;

(C) Provide an electronic means to opt out, such as a form that can be sent via electronic mail or a process at your Web site, if the consumer agrees to the electronic delivery of information; or

(D) Provide a toll-free telephone number that consumers may call to opt out.

(iii) *Unreasonable opt out means.* You do not provide a reasonable means of opting out if:

(A) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that you provided with the initial notice but did not include with the subsequent notice.

(iv) *Specific opt out means.* You may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(b) *Same form as initial notice permitted.* You may provide the opt out notice together with or on the same written or electronic form as the initial no-

tice you provide in accordance with § 1016.4.

(c) *Initial notice required when opt out notice delivered subsequent to initial notice.* If you provide the opt out notice later than required for the initial notice in accordance with § 1016.4 of this part, you must also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(d) *Joint relationships in the case of financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (d), “you” is limited to financial institutions other than credit unions and financial institutions described in § 1016.3(1)(3) of this part.

(1) If two or more consumers jointly obtain a financial product or service from you, you may provide a single opt out notice. Your opt out notice must explain how you will treat an opt out direction by a joint consumer (as explained in paragraph (d)(5) of this section).

(2) Any of the joint consumers may exercise the right to opt out. You may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(3) If you permit each joint consumer to opt out separately, you must permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) You may not require *all* joint consumers to opt out before you implement *any* opt out direction.

(5) *Example.* If John and Mary have a joint checking account with you and arrange for you to send statements to John’s address, you may do any of the following, but you must explain in your opt out notice which opt out policy you will follow:

(i) Send a single opt out notice to John’s address, but you must accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If you do so, and John opts out, you may not require Mary to

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opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If you do so:

(A) You must permit John and Mary to opt out for each other;

(B) If both opt out, you must permit both to notify you in a single response (such as on a form or through a telephone call); and

(C) If John opts out and Mary does not, you may only disclose nonpublic personal information about Mary, but not about John and not about John and Mary jointly.

(e) *Joint relationships in the case of credit unions.* (1) If two or more consumers jointly obtain a financial product or service, other than a loan, from a credit union, the credit union may provide only a single opt out notice. The opt out notice must explain how the credit union will treat an opt out direction by a joint consumer (as explained in the examples in paragraph (e)(5) of this section).

(2) Any of the joint consumers may exercise the right to opt out. A credit union may either:

(i) Treat an opt out direction by a joint consumer to apply to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(3) If a credit union permits each joint consumer to opt out separately, the credit union must permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) A credit union may not require all joint consumers to opt out before the credit union implements any opt out direction.

(5) *Example.* If John and Mary have a joint share account with a credit union and arrange for the credit union to send statements to John's address, the credit union may do any of the following, but it must explain in its opt out notice which opt out policy it will follow:

(i) Send a single opt out notice to John's address, but it must accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If it does so, and John

opts out, it may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If it does so, and if John and Mary both opt out, it must permit one or both of them to notify it in a single response (such as on a form or through a telephone call).

(6) *Special rule for loans.* (i) A credit union is required to provide an initial opt out notice to a borrower or guarantor on a loan if it shares his or her nonpublic personal information with nonaffiliated third parties other than for purposes under §§ 1016.13, 1016.14, and 1016.15.

(ii) A credit union may satisfy its annual opt out notice requirement by providing one notice to those borrowers and guarantors jointly.

(f) *Joint relationships in the case of covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (f), "you" is limited to the financial institutions described in § 1016.3(1)(3).

(1) If two or more consumers jointly obtain a financial product or service from you, you may provide a single opt out notice, unless one or more of those consumers requests a separate opt out notice. Your opt out notice must explain how you will treat an opt out direction by a joint consumer (as explained in paragraph (f)(5) of this section).

(2) Any of the joint consumers may exercise the right to opt out. You may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(3) If you permit each joint consumer to opt out separately, you must permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) You may not require *all* joint consumers to opt out before you implement *any* opt out direction.

(5) *Example.* If John and Mary have a joint credit card account with you and arrange for you to send statements to John's address, you may do any of the following, but you must explain in your opt out notice which opt out policy you will follow:

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(i) Send a single opt out notice to John's address, but you must accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If you do so, and John opts out, you may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If you do so:

(A) You must permit John and Mary to opt out for each other;

(B) If both opt out, you must permit both to notify you in a single response (such as on a form or through a telephone call); and

(C) If John opts out and Mary does not, you may only disclose nonpublic personal information about Mary, but not about John and not about John and Mary jointly.

(g) *Time to comply with opt out.* You must comply with a consumer's opt out direction as soon as reasonably practicable after you receive it.

(h) *Continuing right to opt out.* A consumer may exercise the right to opt out at any time.

(i) *Duration of consumer's opt out direction.* (1) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(2) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal information that you collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with you, the opt out direction that applied to the former relationship does not apply to the new relationship.

(j) *Delivery.* When you are required to deliver an opt out notice by this section, you must deliver it according to § 1016.9 of this part.

(k) *Model privacy form.* Pursuant to § 1016.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in the appendix to this part.

§ 1016.8 Revised privacy notices.

(a) *General rule.* Except as otherwise authorized in this part, you must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a non-affiliated third party other than as described in the initial notice that you provided to that consumer under § 1016.4 of this part, unless:

(1) You have provided to the consumer a clear and conspicuous revised notice that accurately describes your policies and practices;

(2) You have provided to the consumer a new opt out notice;

(3) You have given the consumer a reasonable opportunity, before you disclose the information to the non-affiliated third party, to opt out of the disclosure; and

(4) The consumer does not opt out.

(b) *Examples.* (1) Except as otherwise permitted by §§ 1016.13, 1016.14, and 1016.15 of this part, you must provide a revised notice before you:

(i) Disclose a new category of nonpublic personal information to any nonaffiliated third party;

(ii) Disclose nonpublic personal information to a new category of non-affiliated third party; or

(iii) Disclose nonpublic personal information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(2) A revised notice is not required if you disclose nonpublic personal information to a new nonaffiliated third party that you adequately described in your prior notice.

(c) *Delivery.* When you are required to deliver a revised privacy notice by this section, you must deliver it according to § 1016.9 of this part.

§ 1016.9 Delivering privacy and opt out notices.

(a) *How to provide notices.* You must provide any privacy notices and opt out notices, including short-form initial notices, that this part requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

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(b)(1) *Examples of reasonable expectation of actual notice.* You may reasonably expect that a consumer will receive actual notice if you:

(i) Hand-deliver a printed copy of the notice to the consumer;

(ii) Mail a printed copy of the notice to the last known address of the consumer;

(iii) For the consumer who conducts transactions electronically:

(A) In the case of financial institutions other than those described in §1016.3(1)(3) of this part, post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service; or

(B) In the case of financial institutions described in §1016.3(1)(3), clearly and conspicuously post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service;

(iv) For an isolated transaction with the consumer, such as an ATM transaction, post the notice on the ATM screen and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(2) *Examples of unreasonable expectation of actual notice.* You may not, however, reasonably expect that a consumer will receive actual notice of your privacy policies and practices if you:

(i) Only post a sign in your branch or office or generally publish advertisements of your privacy policies and practices; or

(ii) Send the notice via electronic mail to a consumer who does not obtain a financial product or service from you electronically.

(c) *Annual notices only.* You may reasonably expect that a customer will receive actual notice of your annual privacy notice if:

(1) The customer uses your Web site to access financial products and services electronically and agrees to receive notices at the Web site, and you post your current privacy notice continuously in a clear and conspicuous manner on the Web site; or

(2) The customer has requested that you refrain from sending any information regarding the customer relationship, and your current privacy notice remains available to the customer upon request.

(d) *Oral description of notice insufficient.* You may not provide any notice required by this part solely by orally explaining the notice, either in person or over the telephone.

(e) *Retention or accessibility of notices for customers.* (1) For customers only, you must provide the initial notice required by §1016.4(a)(1), the annual notice required by §1016.5(a), and the revised notice required by §1016.8 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(2) *Examples of retention or accessibility.* You provide a privacy notice to the customer so that the customer can retain it or obtain it later if you:

(i) Hand-deliver a printed copy of the notice to the customer;

(ii) Mail a printed copy of the notice to the last known address of the customer, or, in the case of credit unions, mail a printed copy of the notice to the last known address of the customer upon request of the customer; or

(iii) Make your current privacy notice available on a Web site (or a link to another Web site) for the customer who obtains a financial product or service electronically and agrees to receive the notice at the Web site.

(f) *Joint notice with other financial institutions.* You may provide a joint notice from you and one or more of your affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to you and the other institutions.

(g) *Joint relationships in the case of financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (g), “you” is limited to financial institutions other than credit unions and the financial institutions described in §1016.3(1)(3). If two or more consumers jointly obtain a financial product or service from you, you may satisfy the initial, annual, and revised notice requirements of

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§§ 1016.4(a), 1016.5(a), and 1016.8(a), respectively, by providing one notice to those consumers jointly.

(h) *Joint relationships in the case of covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (h), “you” is limited to the financial institutions described in § 1016.3(1)(3). If two or more consumers jointly obtain a financial product or service from you, you may satisfy the initial, annual, and revised notice requirements of §§ 1016.4(a), 1016.5(a), and 1016.8(a) by providing one notice to those consumers jointly, unless one or more of those consumers requests separate notices.

(i) *Joint relationships in the case of credit unions.* (1) If two or more consumers jointly obtain a financial product or service, other than a loan, from a credit union, the credit union may satisfy the requirements of § 1016.4(a) by providing one initial notice to those consumers jointly.

(2) *Special rule for loans in the case of credit unions.* (i) A credit union is required to provide an initial notice to a borrower or guarantor on a loan if the credit union shares his or her nonpublic personal information with non-affiliated third parties other than for purposes under §§ 1016.13, 1016.14, and 1016.15.

(ii) A credit union may satisfy the annual notice requirements of § 1016.5 by providing one notice to those borrowers and guarantors jointly.

Subpart B—Limits on Disclosures

§ 1016.10 Limits on disclosure of nonpublic personal information to non-affiliated third parties.

(a)(1) *Conditions for disclosure.* Except as otherwise authorized in this part, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

(i) You have provided to the consumer an initial notice as required under § 1016.4 of this part;

(ii) You have provided to the consumer an opt out notice as required in § 1016.7 of this part;

(iii) You have given the consumer a reasonable opportunity, before you disclose the information to the non-

affiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(2) *Opt out definition.* Opt out means a direction by the consumer that you not disclose nonpublic personal information about that consumer to a non-affiliated third party, other than as permitted by §§ 1016.13, 1016.14, and 1016.15.

(3) *Examples of reasonable opportunity to opt out.* You provide a consumer with a reasonable opportunity to opt out if:

(i) *By mail.* You mail the notices required in paragraph (a)(1) of this section to the consumer and allow the consumer to opt out by mailing a form, calling a toll-free telephone number, or any other reasonable means within 30 days from the date you mailed the notices.

(ii) *By electronic means.* A customer opens an online account with you and agrees to receive the notices required in paragraph (a)(1) of this section electronically, and you allow the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(iii) *Isolated transaction with consumer.* For an isolated transaction, such as the purchase of a cashier’s check by a consumer, you provide the consumer with a reasonable opportunity to opt out if you provide the notices required in paragraph (a)(1) of this section at the time of the transaction and request that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(b) *Application of opt out to all consumers and all nonpublic personal information.* (1) You must comply with this section, regardless of whether you and the consumer have established a customer relationship.

(2) Unless you comply with this section, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer that you have collected, regardless of whether you collected it before or after receiving the direction to opt out from the consumer.

(c) *Partial opt out.* You may allow a consumer to select certain nonpublic